

ANALYSIS

A defendant may file a motion for compassionate release:

After the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier.

18 U.S.C. § 3582(c)(1)(A).

Allen does not claim to have requested a sentence reduction from the Bureau of Prisons. Instead, he asserts, relying on *Roe v. Shanahan* 359 F. Supp. 3d 382 (E.D. Va. 2019) and *McDonald v. Centra, Inc.*, 946 F.2d 1059 (4th Cir. 1991), that the Court can waive the exhaustion and 30-day requirements because he is at risk of irreparable injury. Doc #: 270 at 5.

Allen is mistaken. *Roe* involved a judicially, rather than statutorily, imposed exhaustion requirement and so is not on point. *Roe*, 359 F. Supp. 3d at 403. And while *McDonald* did involve a statutory exhaustion requirement, it does not reflect the current state of the law. The current state of the law is that "Mandatory exhaustion statutes . . . establish mandatory exhaustion regimes, foreclosing judicial discretion." *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016). Indeed, several district courts have already concluded that they lack authority to waive § 3582(c)(1)(A)'s exhaustion and 30-day requirements. *See, e.g. United States v. Alma* 2020 U.S. Dist. LEXIS 61588, at *6-7 (E.D. Mich. 2020) (collecting cases).

This Court likewise finds that Congress clearly mandated that a court to not modify a term of imprisonment unless the defendant satisfies the exhaustion or 30-day requirements. Under *Ross*, The Court cannot waive these requirements.

CONCLUSION

Because Allen has failed to comply with the exhaustion and 30-day requirements of § 3582(c)(1)(A), this court lacks the authority to review his Motion. Accordingly, Allen's Motion for Compassionate Release, **Doc #: 270**, is **DENIED**.

IT IS SO ORDERED.

/s/ Dan Aaron Polster April 15, 2020

**Dan Aaron Polster
United States District Judge**